

FILE COPY

BY THE

Supreme Court of the United States

OCTOBER TERM, 1908.

No. **732**.

GEORGE M. BECHTEL, Executor of the Will of
MARTHA F. BECHTEL, Deceased.

GEORGE M. BECHTEL and HAROLD R. BECHTEL,

Petitioners.

vs.

ELA FAY THATCHER, NANCY ROSSAU, ISLENE SCOTT
and STATE OF IOWA, as re^l J. B. Wheeler.

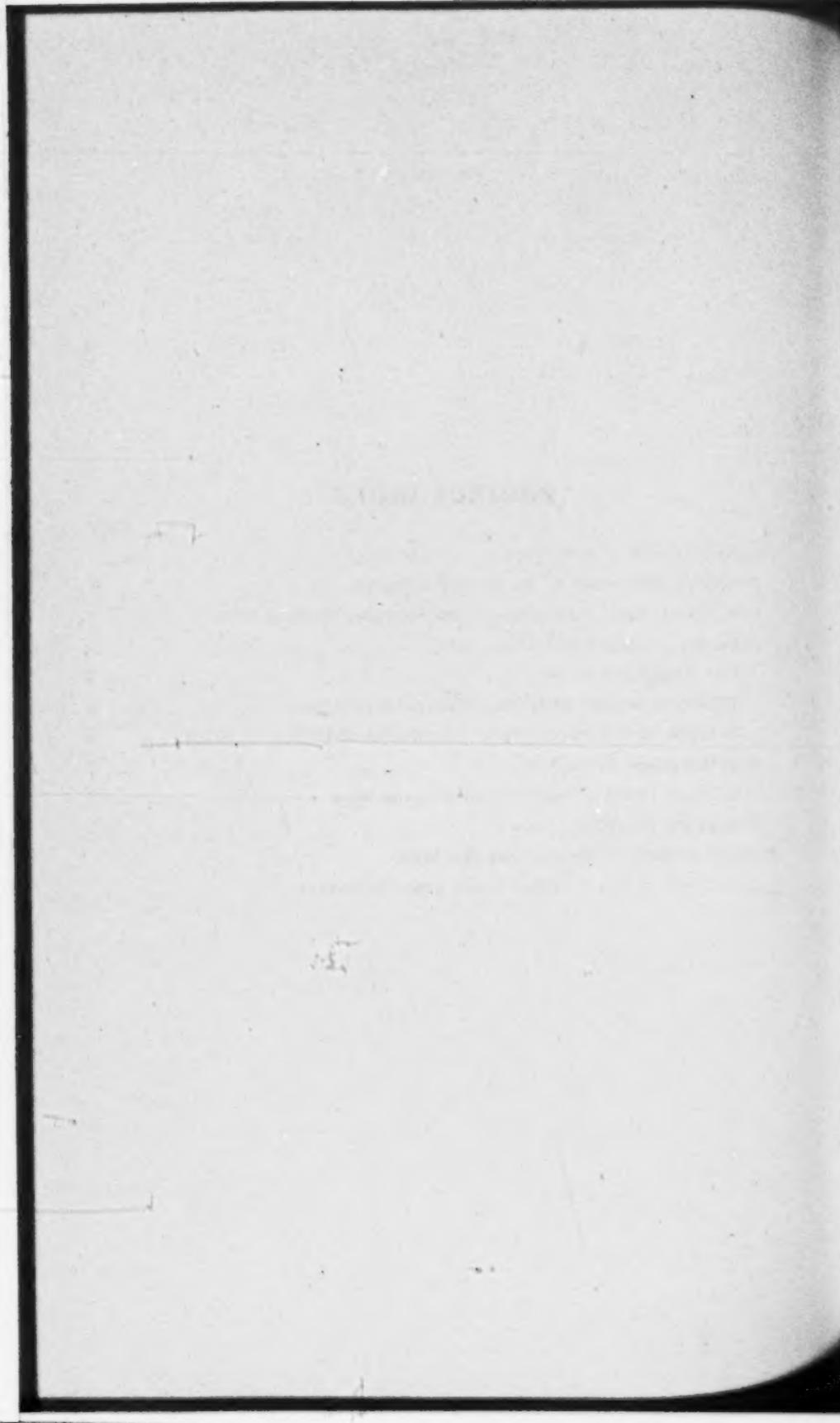
**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF IOWA.**

WAYNE Q. COOK,
of Davenport, Iowa,
Counsel for Petitioners.

COOK, BLAIR & BALLUFF,
of Davenport, Iowa,
Of Counsel.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Summary Statement of the Matter Involved	1
Petitioners' Basic Contention in the Supreme Court of Iowa	4
Statement of Basis of Jurisdiction	5
The Applicable Statute	5
Time and Manner of Raising Federal Questions	5
Decision in Contravention of Constitutional Rights Asserted	6
The Questions Presented	7
Reasons relied on for allowance of the Writ	8
Prayer for the Writ	9
Brief in support of Petition for the Writ (Filed under separate cover)	



IN THE
Supreme Court of the United States
OCTOBER TERM, 1948.

No. _____

GEORGE M. BECHTEL, Executor of the Will of
MARTHA R. BECHTEL, Deceased,
GEORGE M. BECHTEL and HAROLD R. BECHTEL,

Petitioners,

vs.

ILA FAY THATCHER, NANCY ROSSEAU, ELERY SCOTT
and STATE OF IOWA, ex rel J. B. Weede.

PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of George M. Bechtel, Executor, et al, respectfully shows to this Honorable Court:

A.

**SUMMARY STATEMENT OF THE MATTER
INVOLVED.**

This Petition is concerned with constitutional and other limitations on the right of the courts of one state to regulate the internal affairs of corporations created under the laws of other states, and to disregard the contract between the stockholders, created by the charter and the laws of the domiciliary State, governing the reclassification of shares of stock.

Involved is the validity of 39,468 shares of common stock of Iowa Southern Utilities Company of Delaware, a Delaware corporation operating as a public utility company in the State of Iowa under a permit as a foreign corporation.

Prior to 1933 that Corporation had issued and outstanding 100,000 shares of common stock without nominal or par value but representing \$1,000,000.00 of capital, and 80,102 shares of cumulative preferred stock of the par value of \$100 per share representing capital of \$8,010,200.00.

Prior to August 1, 1938 the common stock was all owned by Martha R. Bechtel and the preferred was divided among approximately 4000 holders.

As of August 1, 1938 a plan of recapitalization and reclassification of the stock of the corporation was adopted by vote of the holders of a majority of each class of stock. Pursuant to that action the 100,000 shares of original common stock of Martha R. Bechtel were converted or transmuted into 39,468 shares of new common stock with a par value of \$15.00 per share and the 80,102 shares of original preferred stock were converted or transmuted into approximately 320,000 shares of identical new common stock.

Action was commenced in November, 1939 in the District Court of Iowa in and for Jasper County in the name of the State of Iowa, on the relation of a citizen of that State who was neither a stockholder, nor a customer of Iowa Southern Utilities Company of Delaware, against that corporation, the present Petitioners and a number of individual holders of preferred stock.

Plaintiff alleged that in the issuance of its preferred and common stock, the corporation had violated the provisions of certain Iowa statutes applicable to foreign public utility corporations, then appearing in Chapter 387 of the Iowa Code of 1935, as a result of which much, if not all, of its preferred and common stock was void.

The respondents, Ila Fay Thatcher and Nancy Rousseau who had been the owners of 17 shares of original preferred stock intervened in the action, joining with the plaintiff in claiming violations of the provisions of Chapter 387, but averring that their shares were neither issued, nor held in violation of those statutes and were therefore valid shares. When their pleading was attacked on the ground that it injected a distinct cause of action not joinable with that of the plaintiff, these interveners disclaimed any such intention and claimed merely to be asserting the same claims as the plaintiff, except for their defense that their shares had been fully paid for in cash and were not void.

The defendants denied that the corporation had violated any of the statutes of Iowa, and alleged that the reclassification of the shares of stock was authorized by its charter and the laws of Delaware and was accomplished in strict accordance therewith.

The trial court specifically found that, except in one minor respect which did not affect the validity of its stock or warrant any relief, the corporation had not violated any of the provisions of Chapter 387. It therefore dismissed plaintiff's action and rendered judgment against the relator for sixty per cent of the costs.

The trial court further found that the original common stock, all of which had been issued to the Bechtels and which on the eve of the reclassification was owned by Martha R. Bechtel, had been paid for in full in property as specifically authorized by the Executive Council of the State of Iowa, and was valid, outstanding stock of the corporation.

However, the trial court made a finding that at the time of the reclassification the old common stock was worthless and that permitting it to be transmuted into new common along with (although in far less proportion than) the preferred stock, was inequitable and unfair to the holders

of the original preferred. Upon this finding the trial court decreed void the new common stock derived from the old common and directed that its holders should not be recognized as the holders of new common stock or reinstated to their original status.

Appeals were prosecuted to the Supreme Court of Iowa by the plaintiff from the portion of the decree dismissing its cause of action and by the Bechtels from the portion invalidating their shares. The Supreme Court of Iowa affirmed on both appeals on April 6, 1948. No petition for rehearing was filed by plaintiff and the decree against the plaintiff became final. Petitioners filed in due time a Petition for Rehearing. This was denied November 19, 1948.

B.

**PETITIONER'S BASIC CONTENTIONS IN THE
SUPREME COURT OF IOWA**

were:

1. That the validity of the reclassification of stock was attacked only on the ground that it was issued and held in violation of the provisions of Chapter 387 of the Iowa Code of 1935 and the question of fairness or equity of the plan as between stockholders was not in issue.
2. That in decreeing Petitioner's shares void on grounds other than the violation of the statutes of Iowa the Court decided an issue which was not before it and deprived Petitioners of their property without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.
3. That in decreeing said shares void the Courts of Iowa refused to give full faith and credit to the statutes and laws of Delaware as required by Section 1 of Article IV of the Constitution of the United States.

4. That in holding the plan effective as to the holdings of the original preferred stockholders but void as to those of the common stockholders the Court substituted its judgment for that of the stockholders to whom it was delegated by the laws of Delaware and denied full faith and credit to the corporation laws of Delaware and deprived Petitioners of their contractual rights and of their property without due process of law in violation of Section 1 of Article IV of the Constitution of the United States and of the Fifth and Fourteenth Amendments.

C.

STATEMENT OF BASIS OF JURISDICTION.

The Applicable Statute.

The statutory provision believed to sustain the jurisdiction of this Court to allow the writ is paragraph (b) of Section 237 of the Judicial Code (Act of February 13, 1925), providing that it shall be competent for the Supreme Court, by certiorari, to review any case "where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution".

Time and Manner of Raising Federal Questions.

The contentions, 1) that the decree cancelling Petitioner's shares of stock was not responsive to any issue and therefore deprived them of their property without due process of law; and, 2) that the refusal to restore Petitioners to their former position as holders of original common stock similarly deprived them, arose only at the conclusion of the case in the trial court. They were raised in the Supreme Court of Iowa in Appellant's opening brief. (Appellant's Brief, Div. V, page 84; Rec. p. 463), and were

urged throughout the proceedings in that court and in the Petition for Rehearing (Pet. for Rehearing, Div. V; Rec. p. 528), and the brief in support thereof (Rec. pp. 563-577).

The contention that the reclassification of the shares of stock was controlled by the laws of the State of Delaware was raised in the Answers of the defendant corporation (Div. II, Ans. of corporation, Rec. p. 233 et seq.) and of Petitioners and other individual defendants (Div. II, Ind. Answers, Rec., p. 263; *ibid.*, Div. VII, Rec. 265).

The contention that the decree refused full faith and credit to the General Corporation Law of Delaware was urged in the Supreme Court of Iowa both in the brief (Appellant's Brief, Div. V, p. 84; Rec. p. 463) and in the Petition for Rehearing and brief in support thereof. (Pet. for Rehearing, pages 4, 38-52; Rec. pp. 528, 38-577).

Decision Adverse to Petitioners in Contravention of the Constitutional And Property Rights Asserted.

The Supreme Court of Iowa affirmed the following findings of the trial court:

- a) That the corporate defendant had not violated the provisions of Chapter 387 of the Iowa Code of 1935 in the issuance of any of its preferred or common stock (Concl. of Law, Rec. pages 348-350);
- b) That the original common stock was validly issued and was valid outstanding stock at the time of the reclassification. (Finding n., Rec. p. 335; Finding u-1, Rec. p. 340; Finding u-e, Rec. p. 342; Conclusions of Law, Rec. p. 348);
- c) That the reclassification was authorized by and was consummated in strict accordance with the laws of the State of Delaware (Finding u, Rec. pages 340-343; Concl. of Law G, Rec. p. 349);

d) That by the vote of the holders of a majority of the shares of both classes, the stock of the corporation was *ipso facto* transmuted into new common stock (Finding u-4, Rec. p. 342; Concl. of Law J, Rec. p. 350).

Nevertheless, it held the shares of new common derived from the original common, void, and affirmed the trial court's conclusion that because the original common had become worthless by the time of the reclassification, its reclassification was unfair to the former preferred shareholders (Finding v, Rec. p. 343; Finding aa, Rec. p. 346). It affirmed the decree (Rec. p. 350) declaring such shares void and forbidding their recognition or reinstatement by the corporation. (Rec. p. 481 et seq). In so doing it determined against Petitioners their contentions summarized in Division B, *supra*, and gave finality to a decree violating the due process and full faith and credit clauses and the rights of Petitioners specially set up and claimed by them under the Constitution of the United States.

D.

THE QUESTIONS PRESENTED.

1. Whether the determination of a matter not within the issues as interpreted and announced by the trial court and construed by the parties constitutes due process of law within the meaning of the Fifth and Fourteenth Amendments to the Constitution of the United States.
2. Whether the refusal of the Iowa Courts to give effect to a plan of reclassification of the stock of a Delaware corporation effected in accordance with its charter and the laws of Delaware constitutes a denial of full faith and credit to the laws of that state, where no violation of the laws of Iowa is found.

3. Whether an Iowa court of equity may substitute its judgment for that of the stockholders of a Delaware corporation without violating the contractual rights of the stockholders and depriving them of their property without due process of law and denying full faith and credit to the laws of Delaware.

4. Whether, in the absence of allegations and proof of fraud, an Iowa court of equity may cancel shares of stock derived, in a reclassification valid under the laws of Delaware, from shares valid under all applicable laws, merely because the transmuted shares may have become worthless from a balance sheet standpoint, without violating the full faith and credit clause of the Constitution.

5. Whether, in the absence of allegation and proof of fraud, an Iowa decree invalidating one class of stock of a Delaware corporation reclassified in accordance with the laws of Delaware, without restoring the *status quo ante*, violates the constitutional prohibition against taking property without due process of law.

E.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Petitioners believe the case to be such as to merit a review by this Honorable Court. The private rights involved are substantial. Conservatively estimated, the shares of stock invalidated by the decree have, and had at the time of the affirmance, a value in excess of \$400,000.00.

The questions presented are likewise of real importance. The decree determines that the courts of a State in which a foreign corporation is licensed to do business may not only review the acts of the corporation and its stockholders validly done under the charter and laws of the domiciliary

state, but may change the relative rights of the stockholders in entire disregard of the contract and of the laws governing their status. It likewise determines that property rights conferred by the laws of the State of incorporation pertaining to shares of stock valid under the laws of that State and in no way contravening the law of the forum, may be cancelled, merely because at the moment it would have no value in the event of liquidation. It determines not only the right to review a plan of recapitalization and reclassification of stock approved by the stockholders pursuant to express authority of the charter and laws of the domiciliary State, but the right to revise that plan in a way which the laws of the domiciliary State do not permit its courts to do. It not only cancels the shares which petitioners derived from stock which the Court held valid, but it refuses to restore the original shares.

The validity of such holdings under the Constitution are of fundamental importance, not only to these Petitioners, but to corporations and stockholders generally, to the states whose statutes should control corporations created pursuant to them, and to the defendant corporation, which, while it may properly be indifferent to the immediate consequences as between stockholders, is faced with the necessity of reconciling conflicting views as to the effect of its proceedings on its capital structure.

WHEREFORE, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Iowa, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered on its docket, No. 46686, State of Iowa, ex rel J. B. Weede, Appellee v. Martha R. Bechtel et al, appellants, and that the decree and judgment of the District and Supreme

Courts of Iowa may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

GEORGE M. BECHTEL, Executor of
the Will of MARTHA R. BECHTEL,
Deceased.

GEORGE M. BECHTEL,
HAROLD R. BECHTEL.

BY WAYNE G. COOK,

Counsel for Petitioners.

STATE OF IOWA, vs.
GEORGE M. BECHTEL, Plaintiff in the Civil Case,

vs. OCTOBER 1, 1921.

1921.

GEORGE M. BECHTEL, Plaintiff in the Civil Case,
vs.
MARTHA R. BECHTEL, Decedent,
GEORGE M. BECHTEL and HAROLD R. BECHTEL,
Petitioners,

vs.

ELA FAY TRATCHER, NANCY ROSSAU, ELLEN SCOTT,
and STATE OF IOWA, Petitioners.
vs. J. H. Woods.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

WAYNE G. COOK,
of Davenport, Iowa,
Counsel for Petitioners.

COOK, BLAIR & BALLUFF,
of Davenport, Iowa,
Of Counsel.

SUBJECT INDEX

	Page
I The Opinions Below	1
The Findings and Decree	2
II Statement of the Case	2
III Specification of Errors	5
IV Brief Points and Authorities	6
1. Error in holding relative rights of stockholders in issue	6
2. Error in cancelling Petitioners' shares because of unfairness of plan of reclassification	8
3. Error in not restoring the status quo	11
4. Error in refusal to apply Delaware law	12
V Conclusion	14

TABLE OF CASES CITED

Boyette v. Preston Motors Corp. 206 Ala. 240, 89 So. 746	9, 13
Chable v. Nicaragua Canal Const. Co. 59 Fed. 846	10, 11
Cleveland Printing Ink Co. v. Phipps, 20 Ohio App. 161, 164 N. E. 641	12
Colonial Biscuit Co. v. Orcutt, 264 Pa. 40, 107 Atl. 315	10
Devonian Products Co. v. Webster, 188 Iowa, 1368, 177 N. W. 513	10
Fitzpatrick v. O'Neill, 43 Mont. 552, 118 Pac. 273	10
Frank v. Wilson & Co. 24 Del. Ch. 237, 9A (2d) 82	11
Garey v. St. Joe Mining Co. 32 Utah 497, 91 Pac. 369	9
Graeser v. Phoenix Finance Co. 218 Iowa 1112, 254 N. W. 859	13
Harris v. Weiss Engineering Corp. 44 N. Y. S. (2d) 643	13
Hogue v. American Steel Foundries, 247 Pa. 12, 92 Atl. 1073	13
Kelley v. American Sugar Refining Co. 139 Fed. (2d) 76	13
Langfelder v. Universal Laboratories, 293 N. Y. 200, 56 N. E. (2d) 550	13
Luther v. C. J. Luther Co. 118 Wis. 112, 94 N. W. 69	8
McQuillen v. National Cash Register Co. 27 Fed. Supp. 639	14
Morris v. American Public Utilities, 14 Del. Ch. 136, 122 Atl. 696	9
Paton v. Northern Pacific Ry. Co., 85 Fed. 838	10, 11
Peters v. United States Mortgage Co. 13, Del. Ch. 11, 114 Atl. 598	9, 10
Rogers v. Guaranty Trust Co., 288 U. S. 123	12
Romer v. Porcelain Products Co., Inc. 23 Del. Ch. 52, 2 A (2d) 75	9, 11
Shanik v. White Sewing Machine Corp., 25 Del. Ch. 371, 19 A (2d) 831	12
Shuler v. Southern Iron & Steel Co., 77 N. J. Eq. 60, 75 Atl. 552	10
Sternfield v. Toxaway Tanning Co., 290 N. Y. 294, 49 N. E. (2d) 145	12, 13
Trounstine v. Remington Rand, Inc., 22 Del. Ch. 122, 194 Atl. 95	9, 11
Wabash, St. Louis & Pacific Ry. Co. v. Central Tr. Co., 22 Fed. 138	10, 11
Wallace v. Motor Products Corp., 15 F (2d) 211	9, 12, 13

TABLE OF STATUTES CITED

	Page
1939 Code of Iowa, Sec. 1096 (Real Party in Interest) _____	6
Sec. 10960 _____	7
Sec. 10969 _____	7
Sec. 11130 _____	7
Ch. 387 _____	2
General Corp. Law of Delaware, Sec. 26 (Rec. p. 390) _____	10

ENCYCLOPEDIAS AND ARTICLES CITED

Fletcher, Cyclopedia of Corporations

Vol. 15, sec. 7212 _____	10
Vol. 17, sec. 8425 _____	12

Yale Law Journal, Vol. 31, page 685 _____

10

IN THE
Supreme Court of the United States
OCTOBER TERM, 1948.

No._____

GEORGE M. BECHTEL, Executor of the Will of
MARTHA R. BECHTEL, Deceased,
GEORGE M. BECHTEL and HAROLD R. BECHTEL,
Petitioners,

vs.

ILA FAY THATCHER, NANCY ROSSEAU, ELERY SCOTT
and STATE OF IOWA, ex rel J. B. Weede.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINIONS BELOW.

The opinions of the Supreme Court of Iowa affirming the judgment of which review is sought are published in 31 N.W. (2d) 853, but have not yet appeared in the Iowa reports. They are printed in the Record commencing on page 484.

The opinions on an earlier appeal in which the sustaining of a motion to dismiss was reversed, are published in 231 Iowa 784 and 2 N.W. (2d) 372, with supplemental opinion on rehearing published in 4 N.W. (2d) 869. They appear in the Record at page 85 et seq. Petitioners regard these opinions as material in the present proceeding only

because the opinion on the final appeal adopts views as to the effect of the Delaware corporation laws expressed in the earlier opinion of Justice Bliss.

THE FINDINGS AND DECREE.

The Findings of Fact, Conclusions of Law and Decree of the District Court are set forth in the Record commencing on page 329. The affirmance is shown at page 481 and the denial of petition for rehearing at page 591.

II.

STATEMENT OF THE CASE.

The general nature of the case is briefly stated in Division A of the Petition for the Writ, but further elaboration seems necessary because the case as brought by the plaintiff involved an entirely different cause of action than that which the trial court decided and the Supreme Court of Iowa affirmed against the Petitioners.

The action was commenced in November, 1939 in the name of the State of Iowa, on relation of J. B. Weede, a citizen of that State, pursuant to the provisions of Chapter 387 of the Iowa Code of 1939. Section 8438, appearing in that chapter, authorizes the attorney general, or a citizen, to bring an action in the name of the State, against foreign public utility corporations alleged to have violated the Iowa Statutes regulating the issuance of stock by such corporations operating in the State under permits as foreign corporations.

The plaintiff and relator charged the defendant, Iowa Southern Utilities Company of Delaware with various violations of the provisions of Chapter 387 of the Iowa Code in the issuance of shares of its original common and preferred stock and in exchanging certificates of new com-

-3-

mon stock for those of original common stock and original preferred stock, under a plan of recapitalization and reclassification adopted August 1, 1938. (See Plaintiff's Petition, Rec. p. 4, *et seq.*).

The present Petitioners, as holders of the original common stock, and a number of other individuals, as holders of the original preferred stock, were made parties defendant on the ground that the shares issued to them were void because of the corporation's non-compliance with those Iowa statutes.

The relief sought included the appointment of a receiver, the winding up of the affairs and business of the corporation, and the determination of what shares of its stock were issued and held in violation of the provisions of Chapter 387, and a decree that such shares were void. (See prayer of plaintiff's petition, Rec. p. 26 *et seq.*).

The corporate defendant attacked the plaintiff's petition by a motion to dismiss, equivalent in its legal effect to a demurrer, primarily on the ground that the facts alleged did not entitle the plaintiff to relief. (Rec. p. 69). This motion was sustained (Rec. p. 78) and the plaintiff prosecuted an appeal to the Supreme Court of Iowa. That Court reversed the judgment of dismissal and remanded the case for trial on the merits.

In the meantime, Ila Fay Thatcher and Nancy Rousseau, two of the present Respondents, had filed a pleading which they denominated an "Intervening Answer" (Rec. p. 74). They had been holders of seventeen shares of the preferred stock of the defendant corporation.

Counsel for the corporate defendant moved to strike this intervening pleading on the ground, among others, that it introduced a separate and distinct cause of action in respect of the relative rights of preferred and common stockholders, which, as the Iowa procedural statutes then stood, could not be joined with the cause of action of the

plaintiff. (Rec. p. 206, *loc cit.* p. 207, line 6, p. 208, lines 5, 10, 20).

The Intervenors filed a resistance to this motion (Rec. p. 211), in which they disclaimed any intention to assert any independent cause of action and averred that they sought only to defend the validity of their shares and to join with the plaintiff in its claim that certain of the common and preferred stock was issued and held in violation of Chapter 387.

The motion to strike was overruled by the trial court (Rec. p. 215).

After the remand at the conclusion of plaintiff's appeal the defendants filed their answers (Rec. pp. 223, 254), in which they denied the alleged violations of Chapter 387 and pleaded the General Corporation Law of Delaware and the facts bringing the reclassification within the provisions thereof (Rec. p. 71, line 30; Rec. p. 94, line 27).

The intervenors were represented by independent counsel (Messrs. Clark, Pryor, Hale & Plock) until after the judgment in the trial court was rendered, when such counsel withdrew and counsel who had represented the plaintiff and relator entered their appearances for the intervenors. (Rec. p. 154). Neither the intervenors nor their counsel actually appeared at the trial and no evidence was specifically offered on their behalf (See Reporter's Transcript, p. 41 and throughout).

The trial court, not once, but many times throughout the trial and the preliminary proceedings, defined the issues as limited to whether the defendant corporation had in fact violated the provisions of Chapter 387 in the issuance of any of its shares of stock (Reporter's Trans. 54-56, 495-499, 2861, Trans. of Proceedings on Applic. for Production pp. 31-32, 39, 52-53, 95, 121, 134-142).

The decree cancelling the new common stock derived from the original common in that reclassification was

predicated upon a finding that the original common stock had become worthless because of the priority of funded debt, outstanding preferred stock and accumulated preferred dividends (Rec. p. 346, line 8, p. 343, line 9), and the conclusion of the court that the plan of reclassification approved by the stockholders was unfair and inequitable in allowing the holder of the old common stock an 11% equity in the reorganized structure. (Rec. p. 343, line 9, p. 349, line 22).

The trial court did not set aside the plan. It held the new common stock in the hands of the old preferred stockholders, valid, but cancelled the new common stock derived from old common, and specifically decreed that the present Petitioners should not be recognized by the corporation as stockholders, or as having any equity attributable to their original holdings (Rec. p. 350, line 22).

III.

SPECIFICATION OF ERRORS.

1. The Iowa courts erred in finding and holding that any issue was raised or litigated, involving the rights of the stockholders *inter se*, or the validity of the Petitioners' shares on grounds other than that they were issued and held in violation of the provisions of Chapter 387 of the Code of Iowa.

2. The Iowa courts erred in finding that Petitioners' shares of new common stock, derived from the original common stock under the plan of reclassification approved by the stockholders, could be cancelled because the plan was unfair to the holders of the original preferred stock, and in decreeing such shares void.

3. The Iowa courts erred in cancelling the Petitioners'

shares of common stock, derived as aforesaid, without restoring the *status quo ante*.

4. The Iowa courts erred in finding and holding that the reclassification was not controlled by the charter and the laws of Delaware, and, having been accomplished in strict accordance therewith, was not binding upon all stockholders.

IV.

BRIEF POINTS AND AUTHORITIES.

1. THE IOWA COURTS ERRED IN FINDING AND HOLDING THAT ANY ISSUE WAS RAISED OR LITIGATED, INVOLVING THE RIGHTS OF THE STOCKHOLDERS *INTER SESSE*, OR THE VALIDITY OF THE PETITIONERS' SHARES ON GROUNDS OTHER THAN THAT THEY WERE ISSUED AND HELD IN VIOLATION OF THE PROVISIONS OF CHAPTER 387 OF THE CODE OF IOWA.

a) The State of Iowa had no legal interest in any cause of action between stockholders as to their relative rights or the fairness of a plan of reclassification proposed and adopted pursuant to the laws of Delaware, and there could have been no issue in respect of those matters, between the *plaintiff* and the stockholder defendants.

Real Party in Interest Statute, Sec. 1096, Iowa Code of 1939.

Rule 2, Iowa Rules of Civil Procedure.

See Arg. in Supreme Court of Iowa, Div. I-A, Rec. p. 402.

b) There was no issue between the Intervenors and the defendant stockholders regarding the fairness or equity of the reclassification and no claim that Petitioners' shares were invalid for any reason other than that they might have been issued or held in violation of the provisions of Chapter 387 of the Iowa Code.

1) Such a claim would have constituted a distinct cause of action which could not properly have been joined with that of the plaintiff.

Iowa Code, 1939 Sec. 10960, 10969, 11130.

(See Brief on Petition for Rehearing, Rec. p. 536.)

2) The pleading of the Intervenors does not assert any claim of invalidity of any shares, except for violations of Chapter 387.

Intervening Answer, Rec. p. 202.

3) The Intervenors expressly disclaimed that their intervening answer was intended to raise any issue or assert any cause of action independent of that of the plaintiff under Chapter 387.

See, Resistance to Motion to Strike Intervening Answer, Rec. p. 211.

For Analysis of Intervenor's pleading, see Appellants' brief in Supreme Court of Iowa, Rec. p. 418, et seq.

c) The fairness of the reclassification as between stockholders, and the validity of Petitioner's shares independently of the charge that they were issued in violation of the provisions of Chapter 387, were not voluntarily litigated.

1) The Intervenors who alone had standing to

litigate those questions did not appear and were not represented by counsel at the trial.

(See Reporter's Transcript, p. 41 and throughout).

2) The offer of evidence germane to issues raised by the pleadings between plaintiff and the defendants, or the failure to object to such evidence when offered, should not be construed as a waiver of an improper joinder, or as the voluntary litigation of issues not raised.

Luther v. C. J. Luther Co., 118 Wis, 112, 94 N.W. 69, cited and discussed in Petition for Rehearing, Rec. p. 544-550.

2. THE IOWA COURTS ERRED IN FINDING THAT PETITIONERS' SHARES OF NEW COMMON STOCK, DERIVED FROM THE ORIGINAL COMMON STOCK UNDER THE PLAN OF RECLASSIFICATION APPROVED BY THE STOCKHOLDERS, COULD BE CANCELLED BECAUSE THE PLAN WAS UNFAIR TO THE HOLDERS OF THE ORIGINAL PREFERRED STOCK, AND IN DECREEEING SUCH SHARES VOID.

a) The reclassification which gave rise to Petitioners' shares of new common stock which were declared void, was valid under the laws of Delaware and was binding upon non-assenting stockholders.

1) The laws of Delaware expressly confer upon Delaware corporations the right to reclassify their shares of stock by changing the "number, par value, designations, preferences, or relative rights of the shares".

Sec 26, General Corporation Law of Delaware, (Set out *in extenso* in the Record, pp. 390-394).

2) The reclassification was effected strictly in accordance with the Delaware statute.

Conclusion of Law G. Rec. p. 349, line 10.

3) The provisions of Section 26 of the General Corporation Law of Delaware were a part of the charter of the corporation and as such constituted a contract binding upon all stockholders.

Morris v. American Public Utilities, 14 Del. Chancery 136, 122 Atl. 696.

Garey v. St. Joe Mining Co., 32 Utah 497, 573, 91 Pac. 369, 374.

Peters v. United States Mortgage Co., 13 Del. Chancery 11, 114 Atl. 598.

Wallace v. Motor Products Corp., 15 F(2d) 211.

Boyette v. Preston Motors Corp., 206 Ala. 240, 89 So. 746.

4) When a majority of the old preferred and the old common stock was voted in favor of the reclassification the old stock was *ipso facto* transmuted into the new, and the action was binding on non-assenting stockholders.

Trounstine v. Remington Rand, Inc., 22 Del. Chancery 122, 194 Atl. 95.

Romer v. Porcelain Products Co., Inc., 23 Del. Chancery 52, 2 A(2d) 75.

b) A general court of equity does not have power to change the contract between the corporation and its stockholders, or the relative rights of the stockholders, so as to wipe out, without liquidation, common stock, in favor of stock having priority only on liquidation.

1) In the absence of statutory or charter provisions for reorganization of corporations, changes

in the capital structure changing the relative rights of the holders of different classes of stock, can only be accomplished by unanimous consent.

15 Fletcher, Cyc. of Corps., Sec. 7212.

31 Yale Law Journal, 685.

Peters v. United States Mortgage Co., 13 Del. Chancery 11, 114 Atl. 595, 600.

Paton v. Northern Pacific Ry. Co., 85 Fed. 838.

Chable v. Nicaragua Canal Const. Co., 59 Fed. 846.

Wabash, St. Louis & Pacific Ry. Co., v. Central Tr. Co., 22 Fed. 138.

Shuler v. Southern Iron & Steel Co., 77 N. J. Eq. 60, 75 Atl. 552.

2) Section 26 of the General Corporation Law of Delaware permits it upon the affirmative vote of a majority of all classes of stock affected by the proposed change.

Sec. 26, Gen. Corp. Law quoted Rec. p. 390.

3) A court of equity has no power to declare void, stock which has been validly issued, merely because of a capital impairment, or because it finds it to have become worthless.

Fitzpatrick v. O'Neill, 43 Mont. 552, 118 Pac. 273.

Colonial Biscuit Co. v. Orcutt, 264 Pa. 40, 107 Atl. 315.

Devonian Products Co. v. Webster, 188 Iowa 1368, 177 N.W. 513.

11 Fletcher, Cyc. of Corps., 342.

c) Reorganization cannot be compelled by a court of equity without statutory authority, nor can the terms thereof be fixed by the court.

15 Fletcher, Cyc. of Corps., Sec. 7212.

Paton v. Northern Ry. Co., 85 Fed. 838.

Chable v. Nicaragua Canal Const. Co., 59 Fed. 848.
Wabash, St. Louis & Pac. Ry. Co. v. Central Tr. Co.,
22 Fed. 138.

d) The original common stock was valid under the laws of Delaware and the laws of Iowa.

1) It was issued for property duly appraised by the Executive Council of the State of Iowa and was valid outstanding stock, representing \$1,000,000.00 of the capital of the corporation.

Findings m and n, Rec. p. 335, line 11.

Concls. of Law A and B, Rec. p. 348, line 7.

2) The preferred stock had priority only as to dividends and upon liquidation.

See Amendment to Cert. of Inc., Exhibit P-34, par. g.

3. THE IOWA COURTS ERRED IN CANCELLING THE PETITIONERS' SHARES OF COMMON STOCK, DERIVED AS AFORESAID, WITHOUT RESTORING THE STATUS QUO ANTE.

a) The decree invalidating shares derived from the original common stock, without restoring the *status quo*, deprived Petitioners of rights which pertained to shares owned by them and valid under the laws of both Delaware and Iowa.

1) A plan of reclassification legally adopted will not be set aside unless the *status quo ante* can be restored.

Frank v. Wilson & Co., 24 Del. Chancery 237 9A (2d) 82.

Romer v. Porcelain Products Co., Inc., 23 Del. Chancery 52, 2 A(2d) 75.

Troustine v. Remington Rand, Inc., 22 Del. Chancery 122, 194 Atl. 95.

Shanik v. White Sewing Machine Corp., 25 Del. Chancery 371, 19 A(2d) 831.

Cleveland Printing Ink Co. v. Phipps, 30 Ohio App. 161, 16 4 N. E. 641.

2) A majority of the holders of both classes of stock voted in favor of the reclassification, which could not otherwise have been accomplished.

Finding u-1, Rec. pp. 340, 341.

Sec. 26 Gen. Corp. Law of Del., *supra*.

4. THE IOWA COURTS ERRED IN FINDING AND HOLDING THAT THE RECLASSIFICATION WAS NOT CONTROLLED BY THE CHARTER AND THE LAWS OF DELAWARE, AND, HAVING BEEN ACCOMPLISHED IN STRICT ACCORDANCE THEREWITH, WAS NOT BINDING UPON ALL STOCKHOLDERS.

a) The Supreme Court of Iowa held that the laws of Delaware relating to the reclassification of the stock of Delaware corporations did not control the reclassification in question.

See Div. VII of Opinion, Rec. p. 507.

1) One state or country has no visitorial powers over a corporation created by the laws of another and ordinarily its courts will not interfere in the internal affairs of a foreign corporation, even at the suit of a resident stockholder.

17 Fletcher, Cyc. of Corps., Sec. 8425.

Rogers v. Guaranty Trust Co., 288 U. S. 123.

Sternfield v. Toxaway Tanning Co., 290 N. Y. 294, 49 N. E. (2d) 145.

Wallace v. Motor Products Corp., 15 Fed. (2d) 211, (D. C. Mich.); Affirmed 25 Fed. (2d) 655.

Hogue v. American Steel Foundries, 247 Pa. 12, 92 Atl. 1073.

Boyette v. Preston Motors Corp., 206 Ala. 240, 89 So. 746.

Kelley v. American Sugar Refining Co., 139 Fed. (2d) 76, (1 CCA).

Langfelder v. Universal Laboratories, 293 N. Y. 200, 56 N. E. (2d) 550.

Graeser v. Phoenix Finance Co., 218 Iowa 1112, 254 N. W. 859.

Harris v. Weiss Engineering Corp., 44 N. Y. S. (2d) 643.

2) Reclassification of its shares of stock pursuant to its charter and the laws of the state of its domicile are peculiarly internal affairs over which jurisdiction should be declined by the Courts of other states.

Sternfield v. Toxaway Tanning Co., 290 N. Y. 294, 49 N. E. (2d) 145.

Wallace v. Motor Products Corp., 15 Fed. (2d) 211, *Idem* 25 Fed. (2d) 655.

Langfelder v. Universal Laboratories, 293 N. Y. 200, 56 N. E. (2d) 550.

Kelley v. American Sugar Refining Co., 42 N. E. (2d) 592, (Mass.).

3) The legality and the fairness and equity of a plan of recapitalization must be determined under the law of the state of incorporation and an inquiry with respect thereto involves interference with the management of the internal affairs of the corporation.

Hogue v. American Steel Foundries, 247 Pa. 12, 92 Atl. 1073.

Boyette v. Preston Motors Corp., 206 Ala. 240, 89 So. 746, 18 A. L. R. 1376.

b) The right of the defendant corporation to reclassify its shares by appropriate action of its stockholders is controlled absolutely by the laws of Delaware.

Cases cited under sub points 1) and 2), *supra*.

c) In refusing to apply the Delaware law and to give effect to the reclassification authorized by it, the Iowa courts violated the full faith and credit clause of the Federal Constitution and substituted their judgment for that of the interested stockholders.

McQuillen v. National Cash Register Co., 27 Fed. Supp. 639.

d) In holding void the shares derived by Petitioners under the reclassification plan, the decree deprives Petitioners of vested property and contract rights conferred on them by the Delaware law and protected by the full faith and credit and due process clauses.

V.

CONCLUSION.

Petitioners recognize that elaboration of the brief points in the previous division would verge upon an argument of the merits of the case rather than one for the granting of the writ. Nevertheless, the points there made are so closely interwoven with the constitutional questions involved as to require including them if the federal questions are to be seen in proper perspective. The record in the courts below was voluminous, consisting of several thousand pages of testimony and some twenty thousand exhibits. Practically all of this record was made on a branch of the case which is not involved in the present

application. The judgment in favor of the defendant corporation which exonerated it of all violations of the foreign corporation statutes of Iowa became final, along with the decree that the new common stock derived from the old preferred is valid. Nevertheless, there has been a constant tendency to confuse the issues and the opinions below do not disclose the questions in a clear-cut manner.

Until the conclusion of the trial in the District Court the defendant corporation was defending its own acts against the claims asserted by the plaintiff, the State of Iowa, that it had violated certain Iowa statutes applicable to it as a foreign corporation licensed to conduct a public utility business in the State. The present petitioners, as well as the intervenors and other holders of shares derived from the original preferred stock in the 1938 reclassification were interested so far as appeared, only because the consequences of the alleged violations might be to render their stock void. Their defense to the plaintiff's cause of action inhered in that of the corporation and was entirely successful.

However, when the trial court, after having indicated throughout the trial that the only matter involved was whether the corporation had violated the Iowa statutes, and apparently having forgotten that the Intervenors had expressly disclaimed any intention to assert an independent cause of action, and his own statements relative to the pendency of a separate stockholder's derivative suit in which the validity of the plan of reorganization was under attack, proceeded to pass upon the fairness of the plan as between preferred and common stockholders, the corporation and the common stockholders came to a parting of the way. Petitioners became appellants from the portion of the decree invalidating their stock and the corporation became appellee in plaintiff's appeal from the decree sustaining its defense.

Under the stipulation of the parties the brief and argument of Petitioners as appellants in the Iowa Supreme Court and their Petition for Rehearing are included in the Clerk's transcript and the printed Record in this proceeding. (Rec. pp. 380 and 525). Therefore we have limited the argument here to a summary of the points and authorities.

Petitioners' claim for review actually involves three fundamental contentions.

1. That where a court purports to decide an issue or pass upon a cause of action which it can be demonstrated was not within the issues and not voluntarily litigated, and which it would have been improper to join with that of the plaintiff, and which the only parties who had legal capacity to assert it, disclaimed, and who did not participate in the trial, due process is as effectually denied as though no notice and opportunity to defend had been afforded.

2. That the full faith and credit clause of the Constitution of the United States requires recognition of the validity of changes in the corporate structure authorized by and accomplished in accordance with the charter and laws of the state of incorporation.

3. That the full faith and credit clause and the clause prohibiting the taking of property without due process of law were violated by the decree which cancelled shares derived from stock which was valid under the laws of both Delaware and Iowa and which had been reclassified by the required vote of a majority of the stockholders, pursuant to express provisions of the governing law.

The Supreme Court of Iowa having finally refused to recognize Petitioners' vested contract rights, as guaranteed by the Constitution, their only hope of relief is that this honorable court will grant the writ and review the judgment.

Respectfully submitted,

WAYNE G. COOK,

Counsel for Petitioners.